COMMISSIONER OF CORRECTION *v.* FREEDOM OF INFORMATION COMMISSION ET AL.
(SC 18622)
(SC 18623)

UNITED STATES OF AMERICA ET AL. *v.* FREEDOM OF INFORAMTION COMMISSION ET AL.
(SC 18624)

Rogers, C. J., and Norcott, Palmer, Zarella, McLachlan, Eveleigh and Harper, Js.*

*Argued April 16—officially released September 27, 2012***

Grant Martinez, pro hac vice, and *Sirine Shebaya*, law student intern, with whom were *Michael J. Wishnie*, *Hope Metcalf* and, on the brief, *Pouneh Aravand*, *Bonnie Doyle*, *Alex Iftimie*, *Stephen Poellot*, *Sasha Post* and *Saurabh Sanghvi*, law student interns, for the appellant in Docket No. SC 18622, the appellee and cross appellant in Docket No. SC 18623, and the appellee in Docket No. SC 18624 (defendant Rashad El Badrawi).

Steven R. Strom, assistant attorney general, with whom, on the brief, were *George Jepsen*, attorney general, *Richard Blumenthal*, former attorney general, *Nora R. Dannehy*, deputy attorney general, and *Henri Alexandre*, former assistant attorney general, for the appellant and cross appellee in Docket No. SC 18623 and the appellee in Docket Nos. SC 18622 and SC 18624 (plaintiff commissioner of correction).

H. Thomas Byron III, pro hac vice, with whom were *John B. Hughes*, chief of the civil division of the United States Attorney's Office, District of Connecticut, and *Lisa E. Perkins*, pro hac vice, and, on the brief, *Thomas M. Bondy*, pro hac vice, *Tony West*, pro hac vice, and

David B. Fein, United States attorney, District of Connecticut, for the appellant in Docket No. SC 18624 and the appellee in Docket Nos. SC 18622 and SC 18623 (plaintiff United States of America).

Lisa Fein Siegel, commission counsel, with whom, on the brief, was *Colleen M. Murphy*, general counsel, for the appellee in Docket Nos. SC 18622, SC 18623 and SC 18624 (defendant freedom of information commission).

William S. Fish, Jr., and *Michael J. Pendell* filed a brief for the Tribune Company et al. as amici curiae.

Opinion

PALMER, J. These appeals arise from the ruling of the named defendant, the freedom of information commission (commission), that the defendant Rashad El Badrawi was entitled, under the Freedom of Information Act (act), General Statutes § 1-200 et seq., to the disclosure of a document that the plaintiff, the commissioner of correction (commissioner), obtained from a file in the National Crime Information Center (NCIC) computerized database, which is maintained by the Federal Bureau of Investigation (FBI). The commissioner and the intervenor, the United States of America (United States), appealed from the commission's ruling to the trial court, claiming that the commission improperly had ordered disclosure of the document because, for among other reasons, disclosure was barred by a federal regulation, and, therefore, the document was exempt from the act in accordance with General Statutes § 1-210 (a).[1] The trial court rendered judgments dismissing the appeals in part and sustaining them in part, and ordered that a redacted version of the document be disclosed to El Badrawi. The commissioner and the United States then filed these appeals.[2] We conclude that the document falls within an exemption to the act set forth in § 1-210 (a) and, therefore, reverse the judgments of the trial court.

The record reveals the following undisputed facts and procedural history. El Badrawi was arrested by agents of Immigration and Customs Enforcement (ICE),[3] a federal agency, on October 29, 2004, for alleged violations of civil immigration law. Pursuant to an intergovernmental service agreement between the department of correction (department) and the United States Department of Homeland Security, El Badrawi was incarcerated at the Hartford correctional center (correctional center) from the date of his arrest through December 22, 2004. He voluntarily left the country immediately upon his release from detention.

While El Badrawi was detained at the correctional center, the department submitted an inquiry seeking information about him from the NCIC database.[4] The inquiry generated a record indicating whether El Badrawi was listed in an NCIC file known as the "violent gang and terrorist organization file" (violent gang and terrorist file), and the department printed the record and maintained the printout in its files.[5]

After El Badrawi was released from detention, he requested from the department and the correctional center copies of all public records pertaining to his incarceration.[6] The department's freedom of information administrator provided some of the requested documents[7] but declined to provide the printout that the department had obtained from the NCIC database. El Badrawi then appealed to the commission, alleging that

the department's refusal to provide him with a copy of the NCIC printout violated the act. The United States submitted to the commission a statement of interest and appeared at the hearing on El Badrawi's appeal. The commissioner and the United States contended that, contrary to El Badrawi's claim, the printout was exempt from the act under § 1-210 (a) because its disclosure was barred by 8 C.F.R. § 236.6 (2007)[8] and 28 U.S.C. § 534 (b) (2006).[9] In addition, the commissioner contended that the printout was exempt from disclosure under § 1-210 (b) (3) (D)[10] because it would reveal an investigatory technique not otherwise known to the public. The commission concluded that 8 C.F.R. § 236.6 did not bar disclosure of the printout because the regulation applies only to current detainees. It further concluded that the printout was not exempt under § 1-210 (b) (3) (D) because there was no evidence that the printout had been "compiled" in connection with the detection or investigation of a crime. Rather, the commission expressly found that "the NCIC printout was compiled as a consequence of [El Badrawi's] alleged civil violation of immigration laws." The commission did not address the claim that disclosure was barred by 28 U.S.C. § 534 (b).

The commissioner appealed from the commission's ruling to the trial court. The United States filed in the trial court a statement of interest in which it requested permission to participate in the administrative appeal, and it submitted a brief in support of the commissioner's position.[11] The trial court concluded that, because the commission had not viewed the NCIC printout, there was no basis for its conclusion that the document related solely to a civil violation. The court also concluded that the commission had given no consideration to the commissioner's and the United States' claims that the printout would reveal an investigatory technique not otherwise known to the public for purposes of § 1-210 (b) (3) (D). Accordingly, the court remanded the matter to the commission and directed it to review the NCIC printout in camera and, if necessary, to allow additional argument and to amend its findings.[12]

On remand, the United States filed with the commission a motion to intervene in the matter as a party, which the commission granted. After reviewing the NCIC printout in camera and holding a second hearing, the commission issued a second decision in which it again concluded that the document must be disclosed to El Badrawi under the act. The commission determined that 8 C.F.R. § 236.6 must be narrowly construed as an exemption to the act and that, so construed, it applied only to information regarding current detainees and, therefore, did not bar disclosure of the printout under the circumstances of this case. The commission also determined that, although the FBI and the state had entered into an agreement barring the state from disclosing NCIC records, and although 28 U.S.C. § 534

(b) permitted the FBI to cancel that agreement if the state breaches it, the state could not contract away its obligations under the act, and the threat of cancellation did not preclude the state from disclosing information obtained from the NCIC database. Finally, the commission again concluded that the printout did not contain an investigatory technique unknown to the general public for purposes of § 1-210 (b) (3) (D).

The United States appealed from the commission's ruling to the trial court and filed a motion to consolidate its appeal with the commissioner's pending appeal, over which the trial court had retained jurisdiction. The trial court granted the motion to consolidate. The trial court ultimately concluded that the commission properly had found that, because exemptions to the act must be construed narrowly, 8 C.F.R. § 236.6 must be construed to apply only to information concerning current detainees. The court also agreed with the commission's analysis of 28 U.S.C. § 534 (b). The court disagreed, however, with the commission's determination that the NCIC printout had not been compiled in connection with the investigation of a crime, concluding that the document was the result of a criminal law enforcement effort to identify members of violent gangs and terrorists. Nevertheless, the court concluded that disclosure of the document indicating whether El Badrawi was listed in the violent gang and terrorist file, in and of itself, would not reveal an investigatory technique not known to the general public, which § 1-210 (b) (3) (D) requires to exempt a document from disclosure under the act. Accordingly, the court ordered the United States to redact the NCIC printout to delete information that could lead to the disclosure of any such techniques and to submit the redacted document to the court for in camera review. After the United States submitted a redacted printout, the court issued a supplemental decision in which it ordered that the redacted document be disclosed to El Badrawi. The court rendered judgments dismissing the administrative appeals in part and sustaining them in part.[13]

Thereafter, the commissioner and the United States filed separate appeals from the trial court's judgments.[14] In the commissioner's appeal, El Badrawi filed a cross appeal. Thereafter, the appeals and cross appeal were consolidated with El Badrawi's pending appeal from the trial court's initial remand order. See footnote 12 of this opinion. On appeal, the commissioner and the United States renew their claims that disclosure of the NCIC printout is barred by 28 U.S.C. § 534 (b), § 1-210 (b) (3) (D), and 8 C.F.R. § 236.6. El Badrawi disputes these claims and contends in his cross appeal that the trial court improperly allowed the United States unilaterally to determine the scope of the redactions to the printout. In addition, El Badrawi claims that the trial court improperly remanded the matter to the commission so that the printout could be submitted for in

camera review (1) when a remand was not authorized by General Statutes § 4-183 (h) or (j), (2) the United States had failed to submit the printout as evidence in the initial proceeding before the commission, and (3) no party had requested a remand. We conclude that the trial court incorrectly determined that disclosure of the NCIC printout was not barred by 8 C.F.R. § 236.6 and that it therefore was not exempt from disclosure under § 1-210 (a). Accordingly, we need not address the commissioner's and the United States' claims that disclosure was barred by 28 U.S.C. § 534 (b) and § 1-210 (b) (3) (D). In addition, we do not address El Badrawi's claims in his appeal and cross appeal that the trial court improperly remanded the matter to the commission and ordered the redaction of the printout because these claims are moot in light of our conclusion that the printout is exempt from disclosure under the act.

Because it is dispositive, we first address the claims of the commissioner and the United States that, contrary to the trial court's determination, disclosure of the NCIC printout is barred by 8 C.F.R. § 236.6 and, therefore, that the document is exempt from the act under § 1-210 (a).[15] We begin our analysis by considering whether the decision of the commission is entitled to judicial deference. "Ordinarily, this court affords deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute's purposes." (Internal quotation marks omitted.) *Dept. of Public Safety* v. *Freedom of Information Commission*, 298 Conn. 703, 716, 6 A.3d 763 (2010). El Badrawi contends that, because the issue before us involves the application of an exemption to the act to the facts of this case, we must defer to the commission's reasonable interpretation of the relevant statutory and regulatory provisions. See, e.g., *Rocque* v. *Freedom of Information Commission*, 255 Conn. 651, 659–60, 774 A.2d 957 (2001). The commissioner responds that, because the proper interpretation of the regulation is a pure question of law for this court to decide, this court should not defer to the commission's interpretation. See, e.g., *Director, Retirement & Benefits Services Division, Office of the Comptroller* v. *Freedom of Information Commission*, 256 Conn. 764, 771–72, 775 A.2d 981 (2001) ("the construction and interpretation of a statute is a question of law for the courts, where the administrative decision is not entitled to special deference" [internal quotation marks omitted]). Finally, the United States contends that this court should defer not to the commission's interpretation but to the promulgating agency's interpretation.[16] See, e.g., *Thomas Jefferson University* v. *Shalala*, 512 U.S. 504, 512, 114 S. Ct. 2381, 129 L. Ed. 2d 405 (1994) ("we must defer to the [promulgating agency's] interpretation unless an alternative reading is compelled by the regulation's plain language or by other indications of the [agency's] intent at the time of the regulation's promulgation" [internal

quotation marks omitted]).

We agree with the United States that the interpretation of the promulgating agency, not the commission, is entitled to deference by this court. It is not the scope of § 1-210 (a) that is at issue in these appeals but the meaning of 8 C.F.R. § 236.6. The commission has no special expertise in federal immigration law, in federal criminal law enforcement policies and procedures, or in questions of national security, which matters are the subject of the regulation. Moreover, the intent of our state legislators when setting policy and enacting laws regarding access to public records in this state has no bearing on the intent of the federal agency that promulgated the regulation.[17] If the *promulgating agency* intended the federal regulation to apply to information about former detainees, then such information clearly falls within the "otherwise provided by any federal law" exemption in § 1-210 (a).

We conclude, therefore, that, to the extent that there is any ambiguity in 8 C.F.R. § 236.6, we should defer to the promulgating agency's interpretation of that regulation, as long as that interpretation is not unreasonable. "[The court's] task is not to decide which among several competing interpretations best serves the regulatory purpose. Rather, the agency's interpretation must be given controlling weight unless it is plainly erroneous or inconsistent with the regulation. . . . In other words, we must defer to the [agency's] interpretation unless an alternative reading is compelled by the regulation's plain language or by other indications of the [agency's] intent at the time of the regulation's promulgation."[18] (Citation omitted; internal quotation marks omitted.) *Thomas Jefferson University* v. *Shalala*, supra, 512 U.S. 512.

With these principles in mind, we turn to the language of 8 C.F.R. § 236.6. The regulation provides: "No person, including any state or local government entity or any privately operated detention facility, that houses, maintains, provides services to, or otherwise holds any detainee on behalf of the [Immigration and Naturalization Service, the predecessor to ICE and certain other branches of the United States Department of Homeland Security] (whether by contract or otherwise), and no other person who by virtue of any official or contractual relationship with such person obtains information relating to any detainee, shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee. Such information shall be under the control of the [Immigration and Naturalization] Service and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations and executive orders. Insofar as any documents or other records contain such information, such documents shall not be public records. This section applies to all persons and information identified

or described in it, regardless of when such persons obtained such information, and applies to all requests for public disclosure of such information, including requests that are the subject of proceedings pending as of April 17, 2002." 8 C.F.R. § 236.6 (2007).

The commission and the trial court concluded that, because the first sentence of 8 C.F.R. § 236.6 uses the present tense when it refers to any "person[19] . . . that *houses*, *maintains*, *provides* services to, or otherwise *holds* any detainee"; (emphasis added) id.; the regulation applies only to a person who *currently* engages in one of the described activities, and when a person who is subject to the regulation no longer "houses, maintains, provides services to, or otherwise holds" the detainee; id.; the regulation no longer applies. The United States contends that, to the contrary, the use of the present tense "merely describes a triggering event, not a temporal limitation with a beginning and an end." In other words, the United States argues that, once a person has engaged in one of the described activities with respect to a detainee, the regulation then applies to all information about the detainee in the person's possession, and nothing in the regulation indicates that the obligations that the regulation imposes at that point can be terminated by the subsequent occurrence of any event.

Because we believe that both of these interpretations are plausible, we conclude that the language of the first sentence of 8 C.F.R. § 236.6 is ambiguous. We further conclude that the United States' interpretation is not only reasonable, it is the more reasonable one. First, contrary to El Badrawi's claims, the remaining language in the regulation is either consistent with or supports the United States' interpretation. The third sentence of 8 C.F.R. § 236.6 provides that, "[i]nsofar as any documents or other records contain such information, such documents shall not be public records." El Badrawi claims that "information," as that term is used therein, clearly is limited to information about current detainees. That interpretation, however, merely *assumes* the correctness of El Badrawi's interpretation of the first sentence of the regulation. Although we recognize that, like the first sentence of the regulation, the third sentence is ambiguous, its language neither independently supports El Badrawi's interpretation of the phrase "information relating to any detainee" in the first sentence nor undermines the United States' position that that phrase includes information about detainees who are no longer being held by the state, local or private entity.

The last sentence of 8 C.F.R. § 236.6 provides that "[t]his section applies to all persons and information identified or described in it, regardless of when such persons obtained such information, and applies to all requests for public disclosure of such information,

including requests that are the subject of proceedings pending as of April 17, 2002." According to the United States, this language makes the regulation applicable to information about a detainee who no longer is being detained and to persons who have obtained information about a detainee after the detainee is released. El Badrawi claims that the sentence is a retroactivity provision and merely provides that the regulation applies to information about current detainees who were taken into detention *before* the effective date of the regulation. Because the first sentence of the regulation clearly and unambiguously applies *at least* to all persons that currently hold detainees, however, regardless of when the person received a request for information about the detainee, El Badrawi's interpretation of the last sentence would render it superfluous. Put another way, because the application of the regulation to information about a current detainee simply would not be retroactive, even if the request for information had been submitted before the regulation was enacted, there would be no need for such a retroactivity provision if the first sentence had been intended to apply only to information about current detainees. Under the United States' interpretation, however, the last sentence would not be superfluous because it would clarify the ambiguity in the first sentence as to whether it applies to information about former detainees. "Because statutory interpretations that render language superfluous are disfavored"; *Viacom International, Inc.* v. *YouTube, Inc.*, 676 F.3d 19, 36 (2d Cir. 2012); we conclude that the United States' interpretation of the last sentence is the more reasonable one.

The United States' interpretation also is consistent with the purposes of 8 C.F.R. § 236.6, as set forth in the notices in the Federal Register explaining the regulation. See generally Release of Information Regarding Immigration and Naturalization Service Detainees in Non-Federal Facilities, 67 Fed. Reg. 19,508, 19,508–11 (April 22, 2002) (explaining interim rule); see also Release of Information Regarding Immigration and Naturalization Service Detainees in Non-Federal Facilities, 68 Fed. Reg. 4364, 4366 (January 29, 2003) (explaining that interim rule was adopted as final rule without amendment). The regulation was intended to ensure that the disclosure of information about detainees would be subject to a uniform federal policy,[20] to protect the privacy of detainees,[21] and, most significantly, to prevent adverse impacts on ongoing investigations and investigative methods.[22] All of these purposes would be undermined by allowing state and local entities to disclose information about a detainee after the detainee has been released from custody, subject only to their own policies and procedures. Specifically, allowing such disclosures would be highly adverse to the privacy interests of a detainee who does not wish to be identified as a possible terrorist or who, after his release from

detention, is cooperating with an ongoing government investigation. In addition, disclosure of such information could interfere with the investigation itself, both by discouraging the detainee from continuing to cooperate with the government and by disclosing potentially valuable information about investigative activities that already have occurred. See Release of Information Regarding Immigration and Naturalization Service Detainees in Non-Federal Facilities, supra, 67 Fed. Reg. 19,510 ("[d]isclosure of a detainee's identity or information related to the detainee could deter these individuals from cooperating with the [United States] Department of Justice now *or after they are released from custody* for fear of retaliation by terrorist organizations against [the detainee] or [his] family members and associates" [emphasis added]); id., 19,509 ("[w]hat may seem trivial to the uninformed . . . may appear of great moment to one who has a broad view of the scene and may put the questioned item of information in its proper context"); see also *El Badrawi* v. *Dept. of Homeland Security*, 258 F.R.D. 198, 205 (D. Conn. 2009) (disclosure of fact that detainee is listed in violent gang and terrorist file gives rise to "a danger that an individual could deduce that a confidential informant has infiltrated a particular terrorist cell," and "[t]his knowledge could result in, at worst, the death of the informant, or, at best, the compromise of an ongoing terrorist investigation"); *El Badrawi* v. *Dept. of Homeland Security*, 596 F. Sup. 2d 389, 396 (D. Conn. 2009) ("significant harm . . . would result if members of terrorist organizations were able to confirm whether [individuals] are listed in [the violent gang and terrorist file]"). These concerns have no less force merely because the detainee is no longer in detention.

We note, moreover, that both El Badrawi and the commission conceded at oral argument before this court that, under their interpretation of 8 C.F.R. § 236.6, the regulation would not apply to information about a detainee held by a state or local entity after the detainee is transferred from the custody of that entity to federal custody. It could hardly be clearer, however, that the regulation was intended, *at the very least*, to address the problems caused by disclosure of information about a person who is currently detained. If the regulation, as it clearly must, precludes state and local entities from disclosing information about detainees who have been transferred from state or local custody to federal custody, even though the state or local entity itself no longer "houses, maintains, provides services to, or otherwise holds" the detainee; 8 C.F.R. § 236.6 (2007); we can perceive no reason why the regulation should permit the disclosure of such information when the detainee has been released from custody altogether. Nothing in the language of the regulation differentiates between information about detainees who have been transferred to the custody of another governmental

entity and information about detainees who have been released.[23]

We conclude, therefore, that the commission incorrectly determined that 8 C.F.R. § 236.6 does not bar the disclosure of the NCIC printout. Accordingly, we conclude that the printout falls within the "[e]xcept as otherwise provided by any federal law" exemption set forth in § 1-210 (a).

El Badrawi and the commission make a number of arguments in support of their claim to the contrary. First, El Badrawi contends that the regulation's structure and placement in the Code of Federal Regulations support the view that it was intended to apply only to current detainees. Specifically, El Badrawi notes that the title of both of the notices in the Federal Register explaining the interim and final rules was "Release of Information Regarding Immigration and Naturalization Service Detainees in Non-Federal Facilities," and contends that the phrase "in Non-Federal Facilities" demonstrates that the regulation applies only to information about current detainees. In addition, El Badrawi contends that the Immigration and Naturalization Service issued a press release the day after the interim rule now codified at 8 C.F.R. § 236.6 took effect, in which it stated that the regulation would "cover all . . . detainees being housed temporarily at the facilities on behalf of [the Immigration and Naturalization Service]." Immigration and Naturalization Service, News Release: INS Issues Rule Governing Release of Detainee Information (April 18, 2002). This argument, however, is essentially a rehash of the argument regarding the use of the present tense in the first sentence of 8 C.F.R. § 236.6, which we already have rejected.

El Badrawi further contends that the regulation's placement in part 236 of title 8 of the Code of Federal Regulations, which is entitled "Apprehension and Detention of Inadmissible and Deportable Aliens; Removal of Aliens Ordered Removed,"[24] rather than in part 103 of title 8, which is entitled "Powers and Duties; Availability of Records," indicates that 8 C.F.R. § 236.6 deals primarily with the treatment of detained aliens, not with public access to records. In the context of the interpretative issue presented, this argument is unpersuasive. Although the title of a statute or regulation and its placement within a group of statutes or regulations may provide some evidence of its meaning; see *Burke* v. *Fleet National Bank*, 252 Conn. 1, 13, 742 A.2d 293 (1999); such considerations cannot trump an interpretation that is based on an analysis of the statutory or regulatory language and purpose.

El Badrawi and the commission next contend that the historical context of the promulgation of 8 C.F.R § 236.6 demonstrates that it was intended to apply only to information about current detainees. They note that 8 C.F.R. § 236.6 was promulgated as an interim rule

five days after a New Jersey trial court ordered certain detention facilities in New Jersey to disclose information about alien detainees.[25] See *American Civil Liberties Union of New Jersey, Inc.* v. *Hudson*, 352 N.J. Super. 44, 56, 799 A.2d 629 (App. Div.) (trial court ordered disclosure of records pertaining to detainees on April 12, 2002), cert. denied, 174 N.J. 190, 803 A.2d 1162 (2002). The plaintiffs in *Hudson* had sought information about "persons [then] confined in the Hudson County [j]ail and in the Passaic County [j]ail . . . ." (Internal quotation marks omitted.) Id. Their primary complaint apparently was that "secret detention is anathema to the civilized nations of the international community."[26] Id., 63. El Badrawi and the commission contend that the fact that the regulation was promulgated in response to the New Jersey court order indicates that the only problems that 8 C.F.R. § 236.6 was intended to address were those attendant to the disclosure of information about current detainees. As we have explained, however, such a narrow reading of the regulation would undermine the regulatory purposes that the promulgating agency expressly identified in the notices in the Federal Register. The fact that the plaintiffs' request for information in *Hudson* may have triggered the need for the regulation does not compel the conclusion that the promulgating agency narrowly tailored the regulation to address only the problems resulting from that specific request, without giving any thought to other problems that the disclosure of information about detainees, both those currently detained and those released from detention, might produce. See, e.g., *Oncale* v. *Sundowner Offshore Services, Inc.*, 523 U.S. 75, 79, 118 S. Ct. 998, 140 L. Ed. 2d 201 (1998) ("statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils").

El Badrawi further claims that the Immigration and Naturalization Service had no authority to promulgate 8 C.F.R. § 236.6. In support of this claim, he relies on *Gonzales* v. *Oregon*, 546 U.S. 243, 126 S. Ct. 904, 163 L. Ed. 2d 748 (2006), in which the United States Supreme Court considered whether the United States Attorney General (attorney general) had the authority under the federal Controlled Substances Act, 21 U.S.C. § 801 et seq. (2000 and Sup. V 2005), to issue an interpretive rule, having the force of law, that assisting suicide was not a legitimate medical purpose within the meaning of the Controlled Substances Act and its implementing regulations.[27] *Gonzales* v. *Oregon*, supra, 249. The court noted that, under the Controlled Substances Act, the attorney general was authorized only to " 'promulgate rules and regulations and to charge reasonable fees relating to the registration and control of . . . controlled substances . . . .' "[28] Id., 259, quoting 21 U.S.C. § 821 (Sup. V 2005). The court concluded that the interpretive rule went beyond the attorney general's powers of registration and control of controlled substances;

see *Gonzales* v. *Oregon*, supra, 259–63; and that he lacked the medical expertise to determine whether assisted suicide was a "legitimate medical purpose" under the Controlled Substances Act. (Internal quotation marks omitted.) Id., 267. Accordingly, the court concluded that the Controlled Substances Act "does not give the [a]ttorney [g]eneral authority to issue the [i]nterpretive [r]ule as a statement with the force of law." Id., 268.

Gonzales does not control the present case. The authorizing statute in effect when the Immigration and Naturalization Service promulgated 8 C.F.R. § 236.6 provided that "[t]he Attorney General shall be charged with the administration and enforcement of [the] chapter [governing immigration and nationality] and all other laws relating to the immigration and naturalization of aliens . . . ." 8 U.S.C. § 1103 (a) (1) (Sup. II 2002). In addition, the attorney general was authorized to "establish such regulations . . . and perform such other acts as he deems necessary for carrying out his authority under the provisions of [the] chapter [governing immigration and nationality]."[29] 8 U.S.C. § 1103 (a) (3) (2000). Under 8 U.S.C. § 1226 (a) (2000), "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. . . . [T]he Attorney General . . . (1) may continue to detain the arrested alien . . . ." Finally, 8 U.S.C. § 1103 (c) (2000) provided in relevant part that the commissioner of the Immigration and Naturalization Service "shall be charged with any and all responsibilities and authority in the administration of the [Immigration and Naturalization] Service and of [the] chapter [governing immigration and nationality] which are conferred upon the Attorney General . . . ."

We agree with the court in *American Civil Liberties Union of New Jersey, Inc.* v. *Hudson*, supra, 352 N.J. Super. 44, that "we would breach faith with overarching principles of our federalism if we were to see this case as an occasion for viewing the grant of authority to the [c]ommissioner [of the Immigration and Naturalization Service] as anything but very broad. Although 8 C.F.R. § 236.6 might be primarily concerned with securing confidential information, it still relates to immigration and naturalization in several ways. We accept as not patently unrealistic the government's assertion that the regulation bears [on] the privacy interests of those detainees who may not want to have their names made public and that it tends to affect the safety of the detainees and their families as well as others involved in the detention scheme. The further assertion that the regulation affects ongoing investigations into violations of the immigration laws is also not so far-fetched as to invite disbelief." Id., 78. In addition, "there can be no question that the government of the United States has a compelling interest in securing the safety of the nation's

citizens against terrorist attack." Id. "Thus . . . [8 C.F.R. § 236.6] falls within the authority delegated to the [c]ommissioner [of the Immigration and Naturalization Service] by Congress through the [a]ttorney [g]eneral." Id.

We see nothing in *Gonzales* that would undermine this analysis. Unlike the narrow delegation of authority to the attorney general in that case, which was limited to the registration and control of controlled substances; see *Gonzales* v. *Oregon*, supra, 546 U.S. 259; 8 U.S.C. § 1103 (a) (1) (Sup. II 2002) broadly charged the attorney general "with the administration and enforcement of [the] chapter [governing immigration and nationality] and all other laws relating to the immigration and naturalization of aliens," and 8 U.S.C. § 1103 (c) (2000) allowed the attorney general to delegate to the commissioner of the Immigration and Naturalization Service "any and all responsibilities and authority . . . which are conferred upon the Attorney General . . . ." Moreover, unlike the interpretive rule at issue in *Gonzales*, which affected an activity that historically has been subject to state regulation; see, e.g., *Gonzales* v. *Oregon*, supra, 270 (practice of medicine generally is within power of states to regulate); 8 C.F.R. § 236.6 primarily affects matters involving immigration and national security, which are matters that are exclusively within the purview of the federal government. *American Civil Liberties Union of New Jersey, Inc.* v. *Hudson*, supra, 352 N.J. Super. 76. Although we recognize that 8 C.F.R. § 236.6 may have an incidental effect on the operation of state laws and policies governing the disclosure of documents in the possession of state and local government officials, that effect is limited to cases in which the operation of state law would undermine laws and policies that are clearly federal in scope and within the authority of the promulgating agency to implement.

We also reject El Badrawi's claim that 8 C.F.R. § 236.6 does not apply to the NCIC printout in the present case because the regulation does not clearly express an intent to preempt state law.[30] As the United States notes, however, preemption is not an issue in this case because the act is the only state law under which El Badrawi has sought disclosure of the NCIC printout, and § 1-210 (a) expressly exempts from the act any information that is protected from disclosure under federal law.[31] Because our legislature clearly has expressed in the act its willingness to defer to federal laws barring disclosure of otherwise disclosable information, at least when disclosure of the information is not expressly mandated by an independent provision of state law, there is no conflict between 8 C.F.R. § 236.6 and the act.

Finally, El Badrawi claims that the United States' interpretation of 8 C.F.R. § 236.6 would lead to bizarre and unduly harsh results. For example, he contends

that, if an individual had been in state prison for years pursuant to a sentence imposed under state criminal law, and then served only one day as a detainee as a result of a violation of federal immigration law, the department would have no control over that individual's records. In addition, El Badrawi contends that a detainee released from a state detention facility would be unable to obtain his own medical records from that facility. Although we acknowledge that 8 C.F.R. § 236.6 places obstacles in the path of a person seeking information about immigration detainees from the persons described in the regulation, we are not convinced that the obstacles would be insuperable in every case. The regulation provides that information about detainees "shall be under the control of the [Immigration and Naturalization] Service and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations and executive orders." 8 C.F.R. § 236.6 (2007). Thus, the regulation does not prohibit the Immigration and Naturalization Service or its successor agencies from disclosing information about a detainee, including information that is in the possession of state and local entities, although disclosure of certain information may be barred under other provisions of federal law.[32] Moreover, it is not entirely clear to us that 8 C.F.R. § 236.6 was intended to apply to information about an inmate in state or local custody that otherwise would have been subject to the act when the inmate subsequently is detained pursuant to federal immigration law, if the information is wholly unrelated to the immigration detention. Finally, there may be constitutional limitations on the application of the regulation if the denial of a particular request for information would deprive a person of an important right or subject the person to significant harm. Because the proper resolution of these difficult questions is not before us in the present case, however, we need not address them.

For the foregoing reasons, disclosure of the NCIC printout to El Badrawi is barred by 8 C.F.R. § 236.6, and, therefore, the document falls within the exemption to the act set forth in § 1-210 (a). Accordingly, the trial court improperly dismissed in part the appeals by the United States and the commissioner. Our conclusion that El Badrawi is not entitled to disclosure of the NCIC printout renders moot his challenge on appeal to the propriety of the trial court's decision to remand the matter to the commission and his claim in his cross appeal that the trial court improperly ordered disclosure of a redacted version of the NCIC printout.

The appeal in Docket No. SC 18622 and the cross appeal in Docket No. SC 18623 are dismissed; the judgments sustaining in part and dismissing in part the appeals of the United States of America and the commissioner of correction are reversed and the matter is remanded with direction to render judgments sustaining the appeals of the United States of America and

the commissioner of correction.

In this opinion the other justices concurred.

* The listing of justices reflects their seniority status on this court as of the date of oral argument.

** September 27, 2012, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] General Statutes § 1-210 (a) provides in relevant part: "Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212. . . ."

[2] The commissioner and the United States appealed separately from the judgments of the trial court to the Appellate Court, and we transferred the appeals to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1. As we discuss more fully in this opinion, El Badrawi appealed to the Appellate Court from an earlier ruling of the trial court in this matter, and that appeal also was transferred to this court. All three appeals were subsequently consolidated.

[3] ICE is the principal investigative arm of the Untied States Department of Homeland Security.

[4] The NCIC database is maintained by the FBI and aggregates criminal justice information from a variety of sources. Some files in the database contain information about individual persons and are known as person files. Other files contain records regarding stolen property. Law enforcement agencies routinely check NCIC records to obtain information concerning persons in custody or under investigation.

[5] It is not entirely clear from the record how El Badrawi discovered the existence and nature of the undisclosed printout. The United States and the commissioner have indicated that, when responding to requests for information about persons who have been detained on behalf of ICE, it is their policy and practice to neither confirm nor deny whether the NCIC database contains information pertaining to the detainee. During the proceedings before the commission, however, El Badrawi submitted a "declaration" by one of the law student interns representing him in this matter. The law student intern stated in the declaration that an employee working in the department's central records warehouse had informed him that El Badrawi's file contained a printout from the NCIC database and that the employee had read to him some of the information contained in the printout.

[6] El Badrawi also brought an action in the United States District Court for the District of Connecticut under federal freedom of information laws; see 5 U.S.C. § 552 et seq. (2006); seeking information pertaining to, inter alia, his immigration status prior to his departure from the United States. See *El Badrawi* v. *Dept. of Homeland Security*, 596 F. Sup. 2d 389, 390 (D. Conn. 2009); see also *El Badrawi* v. *Dept. of Homeland Security*, 583 F. Sup. 2d 285, 291, 293–97 (D. Conn. 2008). In addition, he brought an action against the United States, alleging, inter alia, false arrest and false imprisonment, and against various state defendants alleging a violation of his constitutional rights. See *El Badrawi* v. *United States*, 787 F. Sup. 2d 204, 208–209 (D. Conn. 2011).

[7] The department's freedom of information administrator testified at a hearing before the commission that she mistakenly provided documents to El Badrawi because, as she was later reminded, under federal law, information regarding persons detained on behalf of ICE cannot be disclosed under the act.

[8] Title 8 of the Code of Federal Regulations (2007), § 236.6, provides: "No person, including any state or local government entity or any privately operated detention facility, that houses, maintains, provides services to, or otherwise holds any detainee on behalf of the [Immigration and Naturalization Service, the predecessor to ICE and certain other branches of the United States Department of Homeland Security] (whether by contract or otherwise), and no other person who by virtue of any official or contractual relationship with such person obtains information relating to any detainee, shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee. Such information shall be under the control of the [Immigration and Naturalization] Service and shall be subject to public disclosure only pursuant to the provisions of applicable federal

laws, regulations and executive orders. Insofar as any documents or other records contain such information, such documents shall not be public records. This section applies to all persons and information identified or described in it, regardless of when such persons obtained such information, and applies to all requests for public disclosure of such information, including requests that are the subject of proceedings pending as of April 17, 2002."

Hereinafter, all references to 8 C.F.R. § 236.6 are to the 2007 edition.

[9] Title 28 of the United States Code (2006), § 534, provides in relevant part: "(a) The Attorney General shall—

"(1) acquire, collect, classify, and preserve identification, criminal identification, crime, and other records;

* * *

"(4) exchange such records and information with, and for the official use of, authorized officials of the Federal Government, including the United States Sentencing Commission, the States, cities, and penal and other institutions.

"(b) The exchange of records and information authorized by subsection (a) (4) of this section is subject to cancellation if dissemination is made outside the receiving departments or related agencies. . . ."

Hereinafter, all references to 28 U.S.C. § 534 are to the 2006 edition.

[10] General Statutes § 1-210 (b) provides in relevant part: "Nothing in the Freedom of Information Act shall be construed to required disclosure of:

* * *

"(3) Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of . . . (D) investigatory techniques not otherwise known to the general public . . . ."

[11] The record does not indicate whether the trial court ever formally acted on the United States' request.

[12] El Badrawi appealed from the remand order to the Appellate Court. The proceedings on remand to the commission were not stayed pending resolution of the appeal.

[13] After the trial court issued its supplemental decision, the commissioner filed a motion to stay execution pending appeal and a motion for a protective order limiting disclosure of the NCIC printout to counsel for the parties and barring further dissemination of the information contained therein to any person. The trial court granted the motions.

[14] After the appeals and cross appeal were filed, we granted permission to the Tribune Company and the Associated Press to file an amicus brief in support of El Badrawi's position.

[15] We note preliminarily that, "[b]ecause the . . . appeal to the trial court [was] based solely on the record, the scope of the trial court's review of the [commission's] decision and the scope of our review of that decision are the same." *Christian Activities Council, Congregational* v. *Town Council*, 249 Conn. 566, 578 n.12, 735 A.2d 231 (1999). In other words, the trial court's decision in this administrative appeal is entitled to no deference from this court.

[16] The Immigration and Naturalization Service promulgated the interim rule that is now codified at 8 C.F.R. § 236.6 on April 17, 2002. See Release of Information Regarding Immigration and Naturalization Service Detainees in Non-Federal Facilities, 67 Fed. Reg. 19,508, 19,511 (April 22, 2002). El Badrawi notes that, effective November 25, 2002, the detention and removal functions of the commissioner of the Immigration and Naturalization Service were transferred to the under secretary for border and transportation security, a directorate within the United States Department of Homeland Security. See generally Homeland Security Act of 2002, Pub. L. No. 107-296, § 401 et seq., 116 Stat. 2135, 2177–2222, codified at 6 U.S.C. § 201 et seq. (Sup. II 2002). As we noted previously, ICE is the principal investigative arm of the Department of Homeland Security. See footnote 3 of this opinion. El Badrawi argues that, even if the United States is correct that we should defer to the interpretation of the promulgating agency rather than that of the commission, ICE, and not the United States attorney general, should be interpreting 8 C.F.R. § 236.6. Even if El Badrawi is correct, however, he refers to nothing in the record that would support a conclusion that the attorneys representing the United States in this case are not accurately representing ICE's position on this question or that they are unauthorized to represent ICE.

[17] Notably, neither the commission nor El Badrawi claims on appeal that any ambiguity in 8 C.F.R. § 236.6 may be resolved by application of the principle that exceptions to the general rule of disclosure under the act

must be narrowly construed, which was the principle that both the commission and the trial court relied on to support their interpretation of the regulation. See *New Haven* v. *Freedom of Information Commission*, 205 Conn. 767, 775, 535 A.2d 1297 (1988) ("the general rule under the [act] is disclosure with the exceptions to this rule being narrowly construed"). That principle applies to exemptions set forth *within* the act, not to other laws, especially not to laws enacted by a different sovereign. Cf. *Maher* v. *Freedom of Information Commission*, 192 Conn. 310, 315, 472 A.2d 321 (1984) ("[t]he exemptions *contained in* [*the act*] reflect a legislative intention to balance the public's right to know what its agencies are doing, with the governmental and private needs for confidentiality" [emphasis added; internal quotation marks omitted]). Our legislature has no power to impose a particular interpretive gloss on federal law.

[18] The commission and El Badrawi contend that, even if this court ordinarily should defer to the interpretation of the promulgating agency, the interpretation urged by the attorneys representing the United States is entitled to no deference in the present case because it was articulated for the first time in this litigation. See, e.g., *Bowen* v. *Georgetown University Hospital*, 488 U.S. 204, 212, 109 S. Ct. 468, 102 L. Ed. 2d 493 (1988) ("[the court has] declined to give deference to an agency counsel's interpretation of a statute [when] the agency itself has articulated no position on the question, on the ground that Congress has delegated to the administrative official and not to appellate counsel the responsibility for elaborating and enforcing statutory commands" [internal quotation marks omitted]); id., 213 ("[d]eference to what appears to be nothing more than an agency's convenient litigating position would be entirely inappropriate"). We do not agree. In *Bowen*, the United States Supreme Court concluded that, "[f]ar from being a reasoned and consistent view of the scope of [the regulation at issue], the [agency's] current interpretation of [the regulation was] contrary to the narrow view of that provision advocated in past cases, [in which the agency] has argued . . . [a far narrower interpretation]." Id., 212–13. Although there is some language in *Bowen* to suggest that courts are not required to defer to an agency's interpretation that is presented for the first time in a particular case; see id., 212; if an agency's interpretation is reasonable and is not contradicted by previous interpretations, we see no reason to disregard it entirely, especially if the provision at issue touches on questions of law and policy within the agency's expertise and regarding which this court has little experience. See, e.g., *Immigration & Naturalization Service* v. *Aguirre-Aguirre*, 526 U.S. 415, 425, 119 S. Ct. 1439, 143 L. Ed. 2d 590 (1999) ("judicial deference to the [e]xecutive [b]ranch is especially appropriate in the immigration context where officials exercise especially sensitive political functions that implicate questions of foreign relations" [internal quotation marks omitted]); see also *Auer* v. *Robbins*, 519 U.S. 452, 462, 117 S. Ct. 905, 137 L. Ed. 2d 79 (1997) ("[The] [p]etitioners complain that the [agency's] interpretation comes to us in the form of a legal brief; but that does not, in the circumstances of [the] case, make it unworthy of deference. The [agency's] position is in no sense a post hoc rationalizatio[n] advanced by an agency seeking to defend past agency action against attack . . . . There is simply no reason to suspect that the interpretation does not reflect the agency's fair and considered judgment on the matter in question." [Citation omitted; internal quotation marks omitted.]).

To the extent that El Badrawi claims that the United States' interpretation of 8 C.F.R. § 236.6 in the present case is inconsistent with its conduct in the case involving El Badrawi's request under the federal freedom of information laws because the United States did not assert ownership or control of the department's records concerning El Badrawi in that matter, we also are not persuaded by this contention. Even if the United States did not assert ownership or control of the department's records in the case involving El Badrawi's request under the federal freedom of information laws, that fact would appear to have little if any bearing on the question of whether 8 C.F.R. § 236.6 applies to the document at issue in the present case.

[19] For purposes of the regulation, such a "person" includes "any state or local government entity or any privately operated detention facility . . . ." 8 C.F.R. § 236.6 (2007).

[20] "The rule bars release of such information by non-[f]ederal providers in order to preserve a uniform policy on the release of such information." Release of Information Regarding Immigration and Naturalization Service Detainees in Non-Federal Facilities, supra, 67 Fed. Reg. 19,509.

[21] "In some instances, the release of information about a particular detainee or group of detainees could have a substantial adverse impact on

. . . the detainee's privacy." Release of Information Regarding Immigration and Naturalization Service Detainees in Non-Federal Facilities, supra, 67 Fed. Reg. 19,509. In addition, "individuals who were originally detained because of their possible connection to terrorism, have an overwhelming interest in not being connected with such activity. And particularly with respect to those individuals cooperating with the government's law enforcement investigations, there are powerful reasons why such persons would wish to conceal their identities and whereabouts. . . . [T]he fact that certain detainees may wish to publicly identify themselves, which they are free to do, in no way undermines this assessment." (Citation omitted.) Release of Information Regarding Immigration and Naturalization Service Detainees in Non-Federal Facilities, supra, 68 Fed. Reg. 4366. Moreover, "an alien detainee may not wish to have his nation's representatives advised of his detention and may wish to apply for refugee status or asylum." Id.

[22] "In some instances, the release of information about a particular detainee or group of detainees could have a substantial adverse impact on security matters . . . . For example, specific aliens detained under administrative arrest warrants may possess significant foreign intelligence or counterintelligence information that is sought by the United States. The disclosure of those aliens' detention and the location of their detention could invite foreign intelligence activity contrary to the best interests of the United States. Similarly, the premature release of the identity or other information relating to those aliens could jeopardize sources and methods of the intelligence community. Release of information about a specific detainee or group of detainees could also have a substantial adverse impact on ongoing investigations being conducted by federal law enforcement agencies in conjunction with the [Immigration and Naturalization] Service." Release of Information Regarding Immigration and Naturalization Service Detainees in Non-Federal Facilities, supra, 67 Fed. Reg. 19,509. "Officials of the non-[f]ederal providers may not possess information regarding the progress of [f]ederal investigations and cannot make judgments about the risk of release of information relating to [Immigration and Naturalization] Service detainees." Id.

Furthermore, "[t]he significance of one item of information may frequently depend [on] knowledge of many other items of information. What may seem trivial to the uninformed . . . may appear of great moment to one who has a broad view of the scene and may put the questioned item of information in its proper context. The courts . . . of course are ill-equipped to become sufficiently steeped in foreign intelligence matters to serve effectively in the review of secrecy classifications in that area." Id. Moreover, "[d]isclosure of a detainee's identity or information related to the detainee could deter these individuals from cooperating with the [United States] Department of Justice now or after they are released from custody for fear of retaliation by terrorist organizations against [the detainee] or [his] family members and associates." Id., 19,510.

[23] El Badrawi contends that the United States has cited no "evidence in the record of *this case*" to support the claim that the concerns expressed in the Federal Register "continue to be an issue, even years after an alien has been released from custody." (Emphasis in original.) The proper interpretation of 8 C.F.R. § 236.6 in light of the explanations of its regulatory purpose set forth in the Federal Register is a question of law, however, not a factual issue requiring evidentiary proof.

El Badrawi also criticizes the United States for making "sweeping claims of dire consequences that might result from the release by one state jail of one former detainee's record." The question before us, however, is not the factual question of whether the release of information about El Badrawi would have "dire consequences . . . ." Rather, the question is whether the promulgating agency believed that the disclosure of this *type* of information by state and local entities could have adverse consequences and, therefore, should be barred as a matter of law. We conclude that the answer to that question is yes.

Finally, both El Badrawi and the commission contend that whether El Badrawi is listed in the violent gang and terrorist file is now a matter of public knowledge and, therefore, there is no reason to withhold the NCIC printout. Specifically, the commission contends that the very existence of a printout from the file "supports a nearly indisputable inference that the printout does indicate a positive entry." The United States, however, has consistently declined to confirm or deny whether that is the case. In any event, even if the inference that the commission has drawn were correct, that would not exempt the printout from the application of 8 C.F.R. § 236.6. Cf. *Afshar* v. *Dept. of State*, 702 F.2d 1125, 1130–31 (D.C. Cir. 1983) (noting

difference between effects of "[u]nofficial leaks and public surmise" and effects of "official acknowledgment" of undisclosed information).

[24] Section 236.6 is contained in subpart A of part 236, and subpart A is entitled, "Detention of Aliens Prior to Order of Removal."

[25] The Immigration and Naturalization Service issued a news release the day after the effective date of the interim rule, in which it stated that "[t]he need for the rule was highlighted by a New Jersey court order requiring county officials to release information regarding federal detainees pursuant to state law." Immigration and Naturalization Service, News Release: INS Issues Rule Governing Release of Detainee Information (April 18, 2002).

[26] The commission found in its initial ruling in the present case that the plaintiffs in *Hudson* had "sought to provide legal representation to the detainees." The court in *Hudson* expressly found, however, that "[t]he rights of the detainees to representation by counsel . . . have not been directly pleaded, and the standing of the plaintiffs . . . to raise those rights is doubtful . . . ." (Citations omitted.) *American Civil Liberties Union of New Jersey, Inc.* v. *Hudson*, supra, 352 N.J. Super. 62.

[27] The interpretive rule related to a federal regulation providing that "every prescription for a controlled substance [must] 'be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.' 21 C.F.R. § 1306.04 (a) (2005)." *Gonzales* v. *Oregon*, supra, 546 U.S. 250.

[28] Although the Controlled Substances Act also authorized the attorney general to " 'promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient execution of his functions under [the Controlled Substances Act]' "; *Gonzales* v. *Oregon*, supra, 546 U.S. 259, quoting 21 U.S.C. § 871 (b) (2000); the United States Supreme Court apparently concluded that these "functions" related only to registration and control of controlled substances. See *Gonzales* v. *Oregon*, supra, 259.

[29] The attorney general also was authorized to "have control, direction, and supervision of all employees and of all the files and records of the [Immigration and Naturalization] Service." 8 U.S.C. § 1103 (a) (2) (2000). Because the United States does not claim in the present case that the NCIC printout is a file or record of the Immigration and Naturalization Service, we express no opinion as to whether the promulgation of 8 C.F.R. § 236.6 was authorized by 8 U.S.C. § 1103 (a) (2).

[30] Relatedly, El Badrawi claims that, pursuant to the doctrine of constitutional avoidance, we should read 8 C.F.R. § 236.6 narrowly because a broad interpretation raises "constitutional issues" regarding the preemption of state law by a federal agency. It is not clear why El Badrawi believes that the possible preemption of the act raises constitutional concerns. Although he claims that the promulgating agency lacked authority to promulgate 8 C.F.R. § 236.6, such a lack of authority would require us to invalidate the regulation in its entirety without a need to resort to constitutional principles. Moreover, although courts, applying principles of federalism and comity, generally presume a lack of intent to preempt state law in areas traditionally occupied by the states; see, e.g., *Dowling* v. *Slotnik*, 244 Conn. 781, 794, 712 A.2d 396, cert. denied sub nom. *Slotnik* v. *Considine*, 525 U.S. 1017, 119 S. Ct. 542, 142 L. Ed. 2d 451 (1998); the fact that a regulation may be interpreted to preempt state law under the supremacy clause of the United States constitution does not render the regulation constitutionally suspect.

We further note that El Badrawi has cited no authority, and we have found none, to support his claim that the presumption against preemption requires courts to construe federal laws narrowly to avoid conflicts with state laws. Rather, the presumption directs that, when federal law and state law govern the same subject matter, the state law may be given effect unless it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives" of the federal law. (Internal quotation marks omitted.) *Crosby* v. *National Foreign Trade Council*, 530 U.S. 363, 373, 120 S. Ct. 2288, 147 L. Ed. 2d 352 (2000).

[31] Preemption was an issue in *American Civil Liberties Union of New Jersey, Inc.* v. *Hudson*, supra, 352 N.J. Super. 60–61, because the plaintiffs in that case sought the disclosure of detainee information pursuant to a state statute that expressly required the detention facilities to disclose to the public certain information about their inmates, with no exceptions.

[32] In *El Badrawi* v. *Dept. of Homeland Security*, supra, 596 F. Sup. 2d 389, the court determined that El Badrawi was not entitled to obtain NCIC records from the FBI under the federal freedom of information laws because of "the significant harm that would result if members of terrorist organiza-

tions were able to confirm whether they are listed in [the violent gang and terrorist file]," which was "the very harm [that certain exemptions from the federal freedom of information laws] are designed to prevent." Id., 396. Disclosure of certain other records related to his detention was barred under other exemptions to the federal freedom of information laws, including the exemption for information that would reveal law enforcement investigations or techniques. See id., 396–97. The court also determined, however, that some of the information sought by El Badrawi must be disclosed. See id., 395 (ordering disclosure of information concerning visa revocation). Thus, federal law does not bar disclosure by the federal government of *all* records and information concerning an immigration detainee.